



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/920,231	08/01/2001	Rick Meritt	124571-1000	5303

7590

09/26/2002

Thomas C. Wright
GARDERE WYNNE SEWELL LLP
1601 Elm Street, Suite 3000
Dallas, TX 75201

EXAMINER

PIASCIK, SUSAN L

ART UNIT

PAPER NUMBER

3643

DATE MAILED: 09/26/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/920,231

Applicant(s)

MERITT, RICK

Examiner

Susan L Piascik

Art Unit

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 August 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

PETER M. POON
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3000

PMP

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-2, 7-8, 14-15 and 20-21 are rejected under 35 U.S.C. 102(b) as being anticipated by O'Malley et al.

In regards to **claim 1**, O'Malley discloses an animal feeder (10) comprising a feed hopper (16) having a filling end and a feeding end. The feeder (10) has three or more legs (33, 34, 37, 38) wherein the proximate ends of the legs (33, 34, 37, 38) are permanently attached to the feed hopper (16). A skid assembly (12, 14) is permanently attached to the distal ends of the three or more legs (33, 34, 37, 38).

In regards to **claim 2**, O'Malley et al. disclose an animal feeder (10) wherein the filling end of the feed hopper (16) has a cover (58). The cover (58) has an access door (73, 74) having a breathable lid (76, 77).

Regarding **claim 7**, O'Malley et al. disclose an animal feeder (10) wherein the skid assembly (12, 14) is releasably attached to a vehicle.

In regards to **claim 8**, O'Malley et al. disclose an animal feeder (10) wherein feed is distributed by gravity from the feeding end of the feed hopper (16).

Art Unit: 3643

In regards to **claim 14**, O'Malley discloses a one piece wildlife feeder (10) comprising a feed hopper (16) having a filling end and a feeding end. The feeder (10) has four legs (33, 34, 37, 38) wherein the proximate ends of the legs (33, 34, 37, 38) are permanently attached to the feed hopper (16). A skid assembly (12, 14) is permanently attached to the distal ends of the four legs (33, 34, 37, 38).

In regards to **claim 15**, O'Malley et al. disclose a feeder (10) wherein the filling end of the feed hopper (16) has a cover (58). The cover (58) has an access door (73, 74) having a breathable lid (76, 77).

Regarding **claim 20**, O'Malley et al. disclose a feeder (10) wherein the skid assembly (12, 14) is releasably attached to a vehicle.

In regards to **claim 21**, O'Malley et al. disclose a feeder (10) wherein feed is distributed by gravity from the feeding end of the feed hopper (16).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Art Unit: 3643

Claims 3-4 and 16-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over O'Malley in view of Smeester.

In regards to **claim 3**, O'Malley et al. disclose the claimed invention except for specifying the hopper to have a protective cage. However, Smeester teaches an animal feeder (10) wherein the feeding end of the hopper (72) has a protective cage (118).

Therefore, one having ordinary skill in the art at the time of the invention would have found it obvious to modify the animal feeder taught by O'Malley to include a cage surrounding it, as taught by Smeester, so that the feeding end of the hopper is protected from certain species of animals and also from structural damage while animals are feeding.

Regarding **claim 4**, O'Malley et al. disclose the claimed invention except for specifying a ladder for accessing the open end of the hopper. However, Smeester teaches an animal feeder (10) wherein a ladder (see column 6, lines 48-52) may be attached to the structure for accessing the filling end of the hopper (72). Therefore, one having ordinary skill in the art would have found it obvious to modify the feeder disclosed by O'Malley to incorporate a ladder, as taught by Smeester, so that a person may safely reach the top of the hopper in order to refill the feed.

In regards to **claim 16**, O'Malley et al. disclose the claimed invention except for specifying the hopper to have a protective cage. However, Smeester teaches an animal feeder (10) wherein the feeding end of the hopper (72) has a protective cage (118) permanently attached. Therefore, one having ordinary skill in the art at the time of the invention would have found it obvious to modify the animal feeder taught by O'Malley to

Art Unit: 3643

include a permanent cage surrounding it, as taught by Smeester, so that the feeding end of the hopper is protected from certain species of animals and also from structural damage while animals are feeding.

Regarding **claim 17**, O'Malley et al. disclose the claimed invention except for specifying a ladder for accessing the open end of the hopper. However, Smeester teaches an animal feeder (10) wherein a ladder (see column 6, lines 48-52) may be attached to the structure for accessing the filling end of the hopper (72). Therefore, one having ordinary skill in the art would have found it obvious to modify the feeder disclosed by O'Malley to incorporate a ladder, as taught by Smeester, so that a person may safely reach the top of the hopper in order to refill the feed. Though the Smeester reference does not explicitly state that the ladder is permanently attached to the feeder, it has been held that forming in one piece an article which has formerly been in two pieces and put together involves only routine skill in the art.

Claims 5 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over O'Malley in view of Smeester and further in view of Juculano.

In regards to **claim 5**, O'Malley et al., as modified in the previous claim, teach the claimed invention except for specifying a platform near the filling end of the hopper. However, Juculano teaches a ladder having a platform attached to it in order to provide support to a user or an object. Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to modify the ladder disclosed by

Art Unit: 3643

O'Malley, as modified, to include a platform at the end of the ladder, as shown by Juculano, so that a user may be fully supported and stable while filling the animal feeder.

In regards to **claim 18**, O'Malley et al., as modified in the previous claim, teach the claimed invention except for specifying a platform permanently attached to the feeder. However, Juculano teaches a ladder having a platform attached to it in order to provide support to a user or an object. Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to modify the feeder disclosed by O'Malley, as modified, to include a platform at the end of the ladder, as shown by Juculano, so that a user may be fully supported and stable while filling the animal feeder. Though the references do not explicitly teach permanently attaching the platform to the feeder, it has been held that forming in one piece an article which has formerly been in two pieces and put together involves only routine skill in the art.

Claims 6 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over O'Malley in view of Hill et al.

In regards to **claim 6**, O'Malley et al., as modified, teach the claimed invention except for specifying the feed hopper to be constructed from plate steel. O'Malley merely specifies that the feeder is made from an "all metal construction" (column 1, line 64). However, it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. Further, as disclosed in the Hill et al. reference, which teaches an

Art Unit: 3643

outdoor animal enclosure, plate steel is good selection for outdoor structures since it is sturdy, easily transported and weather resistant (column 4, lines 22-32). Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to construct the hopper from plate steel considering the relevant material properties.

In regards to **claim 19**, O'Malley et al., as modified, teach the claimed invention except for specifying the feed hopper to be constructed from plate steel. O'Malley merely specifies that the feeder is made from an "all metal construction" (column 1, line 64). However, it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. Further, as disclosed in the Hill et al. reference, which teaches an outdoor animal enclosure, plate steel is good selection for outdoor structures since it is sturdy, easily transported and weather resistant (column 4, lines 22-32). Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to construct the hopper from plate steel considering the relevant material properties.

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over O'Malley in view of the Materials Engineering Group reference.

In regards to **claim 9**, O'Malley teaches a method for fabricating an animal feeder (10) comprising the steps of: providing a feed hopper (16) having a filling end and a

Art Unit: 3643

feeding end, attaching the proximate ends of three or more legs (33, 34, 37, 38) to the feed hopper (16) and attaching the skid assembly (12, 14) to the distal ends of the three or more legs (33, 34, 37, 38). O'Malley mentions welding baffles (column 2, lines 29-35) in the hopper to strengthen the feeder (10) but never mentions the technique used to attach all of the other parts of the feeder (10). However, it is well known in the art that welding improves the structural design, limits the weight of structure and saves time and money (see internet references). Therefore, one having ordinary skill in the art at the time of the invention would have found it obvious to attach the legs and skid assembly to the feeder by means of welding since this technique ensures a sturdy, lightweight and inexpensive animal feeder.

Claims 10-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over O'Malley in view of the Materials Engineering Group reference and further in view of Smeester.

In regards to **claim 10**, O'Malley et al., as modified, disclose the claimed method except for specifying the hopper to have a protective cage. However, Smeester teaches an animal feeder (10) wherein the feeding end of the hopper (72) has a protective cage (118). Therefore, one having ordinary skill in the art at the time of the invention would have found it obvious to modify the animal feeder taught by O'Malley to include a cage surrounding it, as taught by Smeester, so that the feeding end of the hopper is protected from certain species of animals and also from structural damage while animals are feeding. Further, since it is well known in the art that welding improves the structural

Art Unit: 3643

design, limits the weight of structure and saves time and money (see internet references), one having ordinary skill in the art at the time of the invention would have found it obvious to attach the cage to the feeder by means of welding.

Regarding **claim 11**, O'Malley et al., as modified, disclose the claimed method except for specifying a ladder for accessing the open end of the hopper. However, Smeester teaches an animal feeder (10) wherein a ladder (see column 6, lines 48-52) may be attached to the structure for accessing the filling end of the hopper (72). Therefore, one having ordinary skill in the art would have found it obvious to modify the feeder disclosed by O'Malley to incorporate a ladder, as taught by Smeester, so that a person may safely reach the top of the hopper in order to refill the feed. Further, since it is well known in the art that welding improves the structural design, limits the weight of structure and saves time and money (see internet references), one having ordinary skill in the art at the time of the invention would have found it obvious to attach the cage to the feeder by means of welding.

Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over O'Malley in view of the Materials Engineering Group reference and further in view of Smeester and Juculano.

In regards to **claim 12**, O'Malley et al., as modified in the previous claim, teach the claimed method except for specifying a platform near the filling end of the hopper. However, Juculano teaches a ladder having a platform attached to it in order to provide support to a user or an object. Therefore, it would have been obvious to one having

Art Unit: 3643

ordinary skill in the art at the time of the invention to modify the ladder disclosed by O'Malley, as modified, to include a platform at the end of the ladder, as shown by Juculano, so that a user may be fully supported and stable while filling the animal feeder. Though the references do not explicitly teach permanently attaching the platform to the feeder, it has been held that forming in one piece an article which has formerly been in two pieces and put together involves only routine skill in the art. Further, since it is well known in the art that welding improves the structural design, limits the weight of structure and saves time and money (see internet references), one having ordinary skill in the art at the time of the invention would have found it obvious to attach the cage to the feeder by means of welding.

Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over O'Malley in view of the Materials Engineering Group reference and further in view of Smeester and Hill et al.

In regards to **claim 13**, O'Malley et al., as modified, teach the claimed method except for specifying the feed hopper to be constructed from plate steel. O'Malley merely specifies that the feeder is made from an "all metal construction" (column 1, line 64). However, it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. Further, as disclosed in the Hill et al. reference, which teaches an outdoor animal enclosure, plate steel is good selection for outdoor structures since it is sturdy, easily transported and weather resistant (column 4, lines 22-32). Therefore, it

Art Unit: 3643

would have been obvious to one having ordinary skill in the art at the time of the invention to construct the hopper from plate steel considering the relevant material properties.

Citation of Relevant Art

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The following patents are cited to further show the state of art with respect to animal feeders:

U.S. Pat. No. 485,142 to Stephens
U.S. Pat. No. 2,454,721 to Severance et al.
U.S. Pat. No. 2,808,029 to Geerling
U.S. Pat. No. 2,988,047 to Hurdle
U.S. Pat. No. 3,730,142 to Kahrs et al.
U.S. Pat. No. 4,538,548 to Page
U.S. Pat. No. 4,580,528 to Kendall
U.S. Pat. No. 4,601,414 to Lawson
U.S. Pat. No. 4,719,875 to Van Guilst
U.S. Pat. No. 4,986,220 to Reneau et al.
U.S. Pat. No. 5,435,267 to Patterson
U.S. Design Pat. No. 371,228 to Monin
U.S. Design Pat. No. 397,527 to Bruder et al.
U.S. Pat. No. 5,906,174 to Muldoon

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susan L Piascik whose telephone number is (703)305-0299. The examiner can normally be reached on M-F (8:00-5:30) First Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on (703)308-2574. The fax phone numbers for the organization where this application or proceeding is assigned are (703)305-7687 for regular communications and (703)305-7687 for After Final communications.

Art Unit: 3643

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)305-7687.

slp

September 20, 2002



PETER M. POORN
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3300